

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI

MICHAEL SAMUELSON # 524185
(Full Name) (Register No.)

03-6063-CV-SJ-NKL-P

No. _____

Plaintiff(s),)
(Director) ASSISTANT DIRECTOR)
(Gov) BOB HOLDER GARY B. KEMPER)
(Superintendent) TOM CLEMENTS)
(Full Name) CCA JUDY HUFF)
(cc) MCGINNLEY CCA AMY BERTZ)
(cc) MARK PARKHURST)
(cc) KEITH KLINE SGT HURLEY)
Defendant(s).)

Defendant(s) :

COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

I. Place of present confinement of plaintiff(s): CROSSROADS CORRECTIONAL
CENTER 1115 E PARADE RD CAMERON MO 64429

II. Parties to this civil action:

Please give your commitment name and any other name(s) you have used while incarcerated.

A. Plaintiff: MICHAEL DEAN SAMUELSON Register No. 5241185

Address: CROSSROADS CORR CENTER 1115. E Peace Rd

CAN.200 NO 64429

B. Defendant _____

is employed as _____

at _____

For additional plaintiffs or defendants, provide above information in same format on a separate page.

III Do your claims involve medical treatment?

Yes No

IV. Do you request a jury trial?

Yes X, No

v. Do you request money damages?

Yes No

State the amount claimed.

\$ _____ / _____
(actual/punitive)

VI. Are the wrongs alleged in your complaint continuing to occur? Yes

Yes X No _____

VII. Grievance procedures:

A. Does your institution have an administrative or grievance procedure? Yes No

B. Have the claims in this case been presented through an administrative or grievance procedure within the institution? Yes No

C. If a grievance was filed, state the date your claims were presented, how they were presented, and the result of that procedure. (Attach a copy of the final result). *✓* *5* *Feb 14/03*

(Attach a copy of the final result)
(I&R filed 1/8/03 Denied 1/24/03) (GRIEVANCE Filed Feb 14/03
DENIED 3/4/03) (GRIEVANCE APPEAL Filed MVR 1/2/03
DENIED 4-25-03)

D. If you have not filed a grievance, state the reasons.

VIII. Previous civil actions:

A. Have you begun other civil actions in state or federal courts dealing with the same facts involved in this action? Yes NO

No B. Have you begun other civil actions in state or federal courts which
have been dismissed? Yes No

C. If your answer is "yes" to either of the above questions, provide the following information for each case.

(1) Style: _____
(Plaintiff) (v.) (Defendant)

(2) Dated filed: _____

(3) Court where filed: _____

(4) Case number and citation: _____

(5) Basic claim made: _____

(6) Date of disposition: _____

(7) Disposition: _____
[(pending) (on appeal) (resolved)]

(8) If resolved, state whether for:

[(plaintiff) or (defendant)]

For additional cases, provide the information in the same format on a separate page.

ARGUMENT

IX. Statement of claim

A. State here as briefly as possible the facts of your claim. Describe how each named defendant is involved. Include the names of other persons involved, dates and places. Describe specifically the injuries incurred. Do not give any legal arguments or cite any cases or statutes. You may do that in Item "B" below. If you allege related claims, number and set forth each claim in a separate paragraph. Use as much space as you need to state the facts. Attach extra sheets, if necessary. Unrelated separate claims should be raised in a separate civil action.

ON 12-26-02 I PROVIDED A URIN SAMPLE THAT WAS CLAIMED TO BE DEFECTED
I WAS WRITTEN UP BY CO I KEITH KUIME SEEN BY SOT HURLEY AND READ
THE VIOLATION, FOUND GUILTY BY CCA MCGINNLEY AND REVERSED
TO CCA AMY GERTZ AND CCA PARKHURST AND PUNISHED BY THEM
TO 30 DAYS IN AD SEC CONFINEMENT 30 DAYS SPEND LIMIT
30 DAYS ACTIVITY RESTRICTION AND 10 DAYS ROOM RESTRICTION
MY GRIEVANCE PROCESS'S WERE DENIED BY HUFF, KEMNA,
CLEMENTS, AND THIS POLICY WAS WRITTEN BY KEMPER
AND BOB HODSON.

I FILED A GRIEVANCE TO JUDY HUFF, IT WAS DENIED.
I FILED A GRIEVANCE IT WAS DENIED BY MIKE KEMPER
I FILED A GRIEVANCE APPEAL IT WAS DENIED BY TOM
CLEMENTS AND THIS POLICY WAS MADE BY GARY
P. KEMPER AND BOB HOLDEN.

B. State briefly your legal theory or cite appropriate authority:

MY THEORY IS I WAS WRITTEN UP FOR POSSESSION OR USE OF
INTOXICATING SUBSTANCE, WHEN I USED NO ILLEGAL SUBSTANCES.
AND THIS DOES NOT MEET THE SUM EVIDENCE STANDARD OF MOORE-V-PLASTER 266 F3D
AND CALLS FOR EVIDENCE ABOVE AND BEYOND DELIVERED WRIT, AN ABSENCE OF DRUGS
IS NOT "SUM EVIDENCE" AS DEMANDED FOR APPROPRIATE DUE PROCESS UNDER MOORE

V. Relief: (State briefly exactly what you want the court to do for you.
Make no legal arguments.)

I WANT THIS RULE #11 TAKEN OUT OF MY FILE.
BECAUSE I AM NOT GUILTY, AND IT COULD BE DEPRECIATIONAL
TO FUTURE REVIEWS FOR PAROLE CONSIDERATION.

XI. Counsel:

A. If someone other than a lawyer is assisting you in preparing this
case, state the person's name.

B. Have you made any effort to contact a private lawyer to determine
if he or she would represent you in this civil action?
Yes () No (X)

If so, state the name(s) and address(es) of each
lawyer contacted, and give the results of those efforts:

CANT AFFORD A LAWYER

If not, state your reasons:

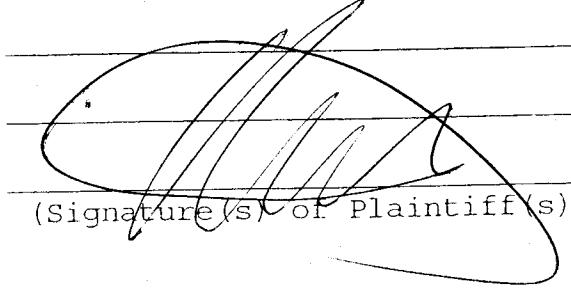
C. Have you previously had a lawyer representing you in a civil action in this court?

Yes () No (X)

If so, state the lawyer's name and address:

I declare under penalty of perjury that the foregoing is true and correct.

Executed (signed) this 28 day of MAY, 2003


(Signature(s) of Plaintiff(s))

W.D. Mo. 5/96



STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
INFORMAL RESOLUTION REQUEST

D264

| | | | |
|-------------------------|------------------|----------|--------------|
| OFFENDER NAME | DOC NUMBER | | |
| Sanderson, Michael | | 524185 | |
| DATE STAFF RECEIVED IRR | COMPLAINT NUMBER | CATEGORY | HOUSING UNIT |
| 1-8-03 | CRCC 03-42 | 3 | 5B224 |

COMPLAINT - ONE ISSUE - BE SPECIFIC

I WAS ISSUED A RULE #11 FOR DILUTED URINE / IT SPECIFICALLY STATES (POSSESSION/ USE OF AN INTOXICATING SUBSTANCE) AND I WAS FOUND GUILTY?

STATE YOUR PROBLEM BRIEFLY

THE PROBLEM IS! I WAS FOUND GUILTY OF USE OF AN INTOXICATING SUBSTANCE, AND MY TOXICOLOGY REPORT STATES THERE WAS NO ILLEGAL SUBSTANCES FOUND, ONLY MY CREATINE LEVEL WAS $\frac{9}{10}$ OF 100 BELOW EXCEPTABLE LIMITS, I HAD A WITNESS THAT WATCHED ME URINATE I DIDN'T GET THE SYSTEM

ACTION REQUESTED: STATE REMEDIES YOU ARE SEEKING

I AM REQUESTING THIS RULE #11 BE EXPUNGED OFF MY FILE OR DROPPED TO A DISOBEDIENCE AN ORDER, BECAUSE A 9.9 CREATINE LEVEL IS JUST TO CLOSE TO 10 AND THATS EXCEPTABLE.

STAFF USE ONLY

DISCUSSION OF COMPLAINT (SUMMARIZE RESULTS OF MEETING)

You submitted a diluted sample. UA testing and results are in accordance with policy

| | | | |
|---|--|-----------------|---------|
| <input type="checkbox"/> IRR RESOLVED BY DISCUSSION/WITHDRAWN | <input checked="" type="checkbox"/> IRR NOT RESOLVED BY DISCUSSION | | |
| OFFENDER SIGNATURE | DATE | STAFF SIGNATURE | DATE |
| | 6-22-03 | | 1-22-03 |

STAFF FINDINGS/RESPONSE

Your complaint has been received and reviewed.

On 01-04-03, you received a conduct violation for Rule #11 Poss/Use of an Intoxicating Substance for a urine sample you provided on 12-26-02. On 1-7-03, you were seen by the Disciplinary Hearing Officer and found guilty. An initial and retest of your urine sample confirmed a diluted specimen as defined in Policy D5-7.1. No due process errors were noted and the violation will remain as written. Informal Resolution Request is denied.

| | | | |
|---|---------|---|---------|
| INVESTIGATING STAFF SIGNATURE | DATE | RESPONDENT SIGNATURE | DATE |
| | 1-24-03 | | 1-24-03 |
| REVIEWER SIGNATURE | DATE | RESULTS | |
| | 1/28/03 | <input type="checkbox"/> SATISFACTORY <input type="checkbox"/> UNSATISFACTORY | |
| YOU HAVE THE RIGHT TO FILE A FORMAL GRIEVANCE. YOU MUST FILE A GRIEVANCE FORM WITH THE DESIGNATED STAFF WITHIN FIVE (5) DAYS FROM THE DATE YOU RECEIVE THIS RESPONSE. FAILURE TO SUBMIT A GRIEVANCE WITHIN THIS TIME FRAME CONSTITUTES ABANDONMENT. | | | |
| OFFENDER SIGNATURE | DATE | | |

3

RECEIVED



STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
OFFENDER GRIEVANCE

GRIEVANCE NUMBER

CRCC-03-42

IRR NUMBER

CRCC 03-42

DATE FILED

FEB 14 2003

INSTITUTION USE ONLY

 EMERGENCY GRIEVANCE NON-GRIEVABLE ISSUE

CRCC

| | | | | | | | | |
|--------------------|-----------|-------|---------|---------------|--------|--------------|------|--------------|
| OFFENDER LAST NAME | SAMUELSON | FIRST | Michael | DOC NUMBER | 524185 | HOUSING UNIT | UNIT | INSTITUTION |
| SAMUELSON | | | | 524185 | | | | 2026Y |

OFFENDER GRIEVANCE/REQUEST

I Received a response on IRR, IT STATES THAT Results are in accordance with Policy? This isnt correct because this Policy States That Im guilty of Possession OR use of Intoxicating substance. AND my Toxicology Report States No illegal substances were found. If you want to write me up for drinking To much water? Then Do That, But youve accused me of Something I DONT DO, AND FOUND NO GUILTY FOR IT! IT ISNOT ILLEGAL TO DRINK WATER, AND WHEN YOU WORK OUT YOUR SUPPOSED TO DRINK LOTS OF WATER, ALL DR'S SAY THAT. I SHOULD HAVE BEEN RETESTED NOT WRITE UP FOR Possession OR use OF Something THAT I CLEARLY AM NOT GUILTY OF, YOUR Policy IS IN VIOLATION OF my Rights Because you HAVE FOUND ME GUILTY OF Something I DONT DO AND The Evidence of The Toxicology Report PROVES THAT. THIS IS CRUEL AND UNUSUAL PUNISHMENT, your Policy needs to HAVE AN ALTERNATIVE AND YOU WRITE THE INDIVIDUE UP FOR SOMETHING Besides USE OR POSSESSION, I AM NOT GUILTY! AND I ASKED TO be RETESTED, YOUR OFFICER OBSERVED ME GIVE THAT SAMPLE, PLEASE EXPUNGE THIS

OFFENDER SIGNATURE

MICHAEL SAMUELSON # 524185

DATE
2-4-03

SUPERINTENDENT RESPONSE

OFFENDER
COPY

Your complaint has been received and reviewed.

Urinalysis testing and any disciplinary action based on the results of urinalysis testing will be conducted in accordance with D5-7.1 Offender Substance Abuse Testing effective February 11, 2002. You were issued a conduct violation for Rule #11-Possession/Use of an Intoxicating Substance dated 12/26/02. You submitted a urine sample for drug testing that was determined to be a diluted specimen. You were afforded due process in accordance with policy. You were found guilty based on sufficient evidence. The findings and sanctions will remain as written.

SUPERINTENDENT SECTION HEAD

Mike Kenna 3-4-03

DATE

You have the right to appeal this decision to a division director. You must file an appeal form with the grievance officer within five (5) days from the day you receive this decision. Failure to submit an appeal within this time frame constitutes abandonment of the grievance.

 I ACCEPT THIS DECISION I APPEAL THIS DECISION

OFFENDER SIGNATURE

DATE



STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
OFFENDER GRIEVANCE APPEAL

RECEIVED

| | | | |
|---|----------------------------|---------------------------------------|----------------------------------|
| OFFENDER LAST NAME <i>Samuelson, Michael</i> | FIRST <i>Michael</i> | GRIEVANCE NUMBER <i>CRCC 03-42</i> | DATE FILED <i>MAR 12 2003</i> |
| DOC NUMBER <i>524185</i> | INSTITUTION <i>CRCC</i> | | |

REASON FOR APPEAL

MY REASON(S) FOR APPEAL, ARE THE FOLLOWING:

I WAS FOUND GUILTY OF RULE #11 (POSSESSION/USE OF AN INTOXICATING SUBSTANCE). HOWEVER, IN REALITY, I WAS FOUND GUILTY OF POSSESSION/USE BECAUSE IT WAS DETERMINED THAT THE URINE SAMPLE I PROVIDED WAS "DILUTED". THIS DOES NOT CONSTITUTE 'POSSESSION AND USE' OF ANY SUBSTANCE WHICH IS INTOXICATING. IN FINDING ME GUILTY OF 'POSSESSION/USE', THAT DETERMINATION WAS MADE DUE TO THE DEFINITION OF 'DILUTED SPECIMEN'. BUT, FOR THE PURPOSE OF THIS PROCEDURE, THE INFERENCE THAT THE "EXCESSIVE AMOUNTS OF LIQUID" WERE INGESTED WITH THE PURPOSE ~~TO~~ "REDUCE DRUG LEVELS" IN THE URINE SAMPLE. THE VIOLATION WAS GIVEN TO ME WITHOUT PROVING THAT 'I', WITH THAT 'INTENTION', INGESTED LARGE AMOUNTS OF WATER. FURTHER, THERE WAS NO TRACE, AT ANY LEVEL, THAT INDICATES THAT I INGESTED LIQUID TO 'REDUCE' ANYTHING.

(SEE ATTACHMENT)

OFFENDER SIGNATURE

DATE

RESPONSE

RECEIVED

MAR 17 2003

Division of Adult Institutions
Assistant Director

OFFENDER
COPY

SIGNATURE

DATE

You are entitled to appeal this decision to the Department Director. You must file a second appeal with the Grievance Officer within five (5) days after receiving this response. Failure to submit an appeal within this time frame constitutes abandonment of the grievance.

I ACCEPT THIS DECISION

I APPEAL THIS DECISION

I EXHAUST THIS GRIEVANCE

OFFENDER SIGNATURE

DATE

ATTACHMENT

ATTACHMENT APL1/CRL 03-42

I HAVE NEVER RECEIVED A RULE #11 DURING ALL MY TIME IN THE DOC, AND, THE TOXICOLOGY REPORT ON THIS VIOLATION INDICATES THAT IT WAS 'NEGATIVE' FOR ILLEGAL SUBSTANCES AND, THE CREATININE LEVEL WAS ONLY 'ONE TENTH' BELOW ACCEPTABLE LIMITS. I WAS NEVER RETESTED AFTER IT WAS FOUND THAT SUCH LEVEL WAS LOW AS IS THE POLICY FOR PROBATION/PAROLE UNDER THE SAME CIRCUMSTANCES. RATHER, I RECEIVED A VIOLATION ALLEGING POSSESSION/USE. THE BASIS FOR THE VIOLATION IS THE POLICY'S DEFINITION OF "DILUTED SPECIMEN".

BUT, IN ORDER TO SUBSTITUTE 'POSSESSION/USE' WITH 'DILUTED SPECIMEN', THERE MUST BE PROOF THAT I, WITH THE INTENTION TO CONCEAL DRUG USAGE, BY REDUCING THE LEVELS OF SUCH DRUGS, DRANK LARGE AMOUNTS OF LIQUIDS (THIS HAS NOT BEEN PROVED) AND, THE TOXICOLOGY REPORT DOES NOT ALLEGUE THAT THE TRACE LEVELS OF ANY DRUG WAS REDUCED, THEREFORE, A VIOLATION FOR 'POSSESSION/USE' CANNOT STAND.

OFFENDER COPY

AS DEFINED BY LEGAL STANDARDS, BLACK'S LAW DICTIONARY DESCRIBE 'USE' AS: THE ACTION TO AVAIL ONESELF OF; ACT OF EMPLOYING SOMETHING. AND, 'POSSESSION' AS: THE CONTROL OVER A THING WITH THE INTENT TO HAVE AND TO EXERCISE SUCH CONTROL. NONE OF THE DEFINITIONS SUSTAIN THE FINDING OF GUILTY IN THIS VIOLATION FOR 'POSSESSION/USE'.

I SHOULD HAVE BEEN ORDERED TO PROVIDE ANOTHER SAMPLE FOR RE-TEST, AS IS THE POLICY USED BY PROBATION/PAROLE, FOR INDIVIDUALS IN THE CUSTODY OF THE STATE. BUT THIS WAS NOT DONE. THE FAILURE TO RETEST A PRISONER RESULTS IN PUNISHMENT OF INNOCENT AND GUILTY ALIKE. DUE PROCESS DOES NOT INVISION

THIS RESULT. IN OTHER WORDS, A PERSON WHO'S LAB REPORT ALLEGES HAVING A 'DILUTED SPECIMEN' WILL BE FOUND GUILTY, ALONG WITH THE ONES WHO HAVE DELIBERATELY INGESTED LARGE AMOUNTS OF LIQUID TO CONCEAL DRUG USAGE, EVEN THOUGH NOT DONE WITH THE INTENTION TO DECEIVE OR CONCEAL ANYTHING. THIS, BORDERS THE EQUAL PROTECTION OF THE LAW, AS ALSO CRUEL AND UNUSUAL PUNISHMENT. **ATTACHMENT** APL1/CALL 03-42

IN ADDITION, ONCE THE VIOLATION IS IN FILE, IT MAY AFFECT THE REVIEW OF THE INSTITUTIONAL ADJUSTMENT AND PAROLE DECISIONS, ADVERSLY, AGAINST THE PRISONER WHO IS NOT TRYING TO CONCEAL ANYTHING.

ALTHOUGH IT MAY BE ASSUMED THAT ALL PRISONERS DILUTE THEIR SAMPLES TO REDUCE DRUG LEVELS IN THE URINE, AN ASSUMPTION IS NOT ENOUGH TO PROVIDE THE BASIS FOR FINDING ANYONE GUILTY OF POSSESSION / USE WHEN THERE IS NO PROOF OF INTENTIONAL ACT TO CONCEAL, AND BECAUSE I WAS NOT ORDERED TO PROVIDE ANOTHER SAMPLE FOR RE-TEST, AS IT SHOULD HAVE BEEN DONE, THIS VIOLATION SHOULD AND MUST BE EXPONGE FROM MY FILE.

**OFFENDER
COPY**

Finally, I will GREATLY APPRECIATE IT IF THE REVIEW OF THIS APPEAL IS EXPEDITED ON THE BASIS THAT, ADVERSLY AFFECT ME IF/OR IN THE EVENT OF ANY INSTITUTIONAL REVIEW, i.e., PAROLE HEARING, IN THE COMING MONTHS.

THANK YOU
SINCERLY



DIVISION OF ADULT INSTITUTIONS
DIVISION DIRECTOR RESPONSE
CROSSROADS CORRECTIONAL CENTER

TO: Samuelson, Michael #524185
VS: CRCC
CATEGORY: 3 – Due Process
LOG: CRCC-03-42
DATE: April 25, 2003

I am in receipt of your grievance appeal request received by the CRCC Grievance Office on 3/12/03 regarding a conduct violation that was issued to you on 1/04/03 for Rule #11 – Possession/Use of an Intoxicating Substance. The violation was issued to you as a result of a urine sample that you provided on 12/26/02 testing/confirming positive for a diluted urine sample. You contend the following: (1) although the urine sample that you provided tested/confirmed for a diluted sample, such does not constitute “Possession/Use of an Intoxicating Substance”, (2) the violation was issued to you without proving that you had the intent of ingesting a large amount of water, and (3) you should have been ordered to provide another sample for re-test as is the policy of probation and parole. You request that the violation be dismissed/expunged.

I have reviewed your complaint and pertinent information. I concur with the response issued to you at the IRR and Grievance level. Be advised that the laboratory at Cremer Therapeutic Community Center (CTCC) follows the guidelines set forth by the Substance Abuse and Mental Health Services Administration (SAMHSA) to ensure that the results are correct and supportable in a court of law. In accordance with policy D5-7.1, III, G., 3. “Specimens which have been adulterated, **diluted** or substituted **will be considered the same as a positive result.**” Policy does not state that “intent” has to be proven, only that the urinalysis testing is to be conducted in accordance with D5-7.1. Your request for a “re-test” per Probation and Parole’s standards (alleged) is denied. You received due process on the violation with no noted errors, therefore the violation and sanctions will remain as written.

**OFFENDER
COPY**

Grievance Denied.

3/17/03

4/25/03

Tom Clements

Date Received

Date Reviewed

Tom Clements, Assistant Division Director
Division of Adult Institutions

rw

cc: file